THE HON'BLE MR JUSTICE B.PRAKASH RAO

and

THE HON'BLE MR JUSTICE D.APPA RAO

WRIT APPEAL NO.1492 of 1999

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10th February 2006

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 20.09.1999 in W.P.NO.7009 OF 1994 on the file of the High Court.)

Between:

Y.Venkateswara Rao, S/o.Y.Satyanarayana, 28 years, Hindu, Male, R/o.Kodevari Street, Old Town, Tadepalligudem, West Godavari District.

...APPELLANT

AND

1. The Divisional Manager, APSRTC, West Godavari At Eluru, West Godavari District.
2. The Chief Personnel Manager, APSRTC, Musheerabad, Hyderabad.

...RESPONDENTS

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE D.APPA RAO

WRIT APPEAL NO.1492 OF 1999

JUDGMENT: (Per the Hon'ble Mr Justice B.Prakash Rao)

Heard the learned counsel appearing for the petitioner and Sri R.Manmadha Reddy, the learned Standing Counsel for APSRTC appearing for the respondents.

The appellant/unsuccessful writ petitioner filed this appeal, who seeks to assail the order dated 20.09.1999 in W.P.No.7009 of 1994 dismissing the Writ Petition, wherein he claimed for his appointment as Conductor under Ex-employees' Children Quota in pursuance of the then existing circulars.

The facts, which are necessary for disposal of this appeal, are that admittedly, the appellant's father worked as a driver in APSRTC being appointed in the year 1960 and subsequently, he retired from duty on medical grounds w.e.f.15.09.1986. At the

relevant point of time, the circulars in Vogue contemplate for appointment of Ex-employees' Children on applications made by them. Accordingly, the appellant/writ petitioner made an application in October 1986 for his appointment under Ex-employees' Children Quota. Thereafter, the appellant was called for an interview in December 1986 but as there was no intimation of appointment, he filed Writ Petition No.7009 of1994. During the pendency of the Writ Petition, this Court granted interim direction as per the order dated 15.04.1994 in W.P.M.P.No.8578 of 1994 to consider the appellant's case for appointment under the said Scheme. Accordingly, he was appointed as Conductor in the year 1987 and since then he has been discharging his duties. However, when the Writ Petition came up for 'Final Hearing', the learned Single Judge dismissed the Writ Petition on the ground that the very same circular or the Scheme was held to be bad and illegal as per the judgment delivered by the Division Bench of this Court in ***Shaik Ahmad Ali Shah & Others v. Divisional Manager, APSRTC, Kakinada and others***. Hence, the appeal.

The learned counsel appearing for the appellant submits that in fact while the said scheme was being set aside by the Division Bench of this Court, as per the aforesaid decision, this Court protected all such acts which have been taken under the Scheme or in Vogue and to continue the persons who have been appointed under the Scheme prior to the date of the said judgment. Since the case of the appellant/writ petitioner squarely falls within the purview of the said situation, in spite of the fact that the circular was set aside, he is entitled to be continued in service.

The learned Standing Counsel appearing on behalf of the respondents sought to repel the aforesaid contentions.

Having regard to the submissions made on either side and on perusal of the material available on record, it is seen that there is no dispute with regard to the fact that the appellant's father was an

ex-employee and retired on medical grounds and subsequently, the appellant made an application to consider his case under the said Scheme. Since the same was not done, he filed the Writ Petition and as per the interim direction dated 15.04.1994 in W.P.M.P.No.8578 of 1994, the appellant was appointed. However, finally the Writ Petition was dismissed by setting aside the circular and the Scheme, holding that the appointment made prior to the date of the judgment cited (1 supra) would hold good. Having regard to the fact that the appointment of the appellant is prior to the said judgment, the appellant's case falls within the exception of the very same judgment in ***Shaik Ahmad Ali Shah & Others v. Divisional Manager, APSRTC, Kakinada and others*** case (1 supra).

The learned counsel appearing for the appellant further pointed out that following the same, this Court has already upheld such appointments as per the judgment in ***K.Nagaraju v. Senior Manager (O) APSRTC, West Godavari District and others***.

In view of the same, we hold that since the appellant's appointment is prior to the date of the judgment (1 supra), the appellant is entitled to the benefit as contemplated therein. Accordingly, he is entitled to continue as Conductor.

The Writ Appeal is allowed holding that the appellant is entitled to continue in the post of Conductor. No costs.

(B.PRAKASH RAO, J)

(D.APPA RAO, J)

10th February 2006

RRB

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